

APPEAL NO. 010769

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was opened on October 31, 2000, and closed on March 7, 2001. The hearing officer considered two claims asserted by the appellant (claimant) with regard to her employment with (employer). (Docket No.1) concerns (carrier 1) and (Docket No. 2) concerns (carrier 2). Two carriers are involved because the claimant's employer changed carriers during the time frame between the claimant's first and second claims. The hearing officer resolved the disputed issues by determining that, with respect to (Docket No. 1), the claimant's \_\_\_\_\_, compensable injury did not extend to and include carpal tunnel syndrome (CTS), injury to her right or left shoulder, or injury to her cervical spine. Regarding (Docket No. 2), the hearing officer concluded that the claimant did not sustain a compensable injury in the form of an occupational disease; that she did not timely report an alleged injury to her employer, thereby relieving the employer from liability pursuant to Section 409.002 of the 1989 Act; and that she did not have disability. The claimant appeals all issues decided in favor of the carriers on sufficiency grounds and seeks reversal. The carriers respond and urge affirmance of the hearing officer's decision and order in all respects.

DECISION

Affirmed.

\_\_\_\_\_, Injury

The hearing officer did not err in determining that the claimant's compensable injury of \_\_\_\_\_, did not extend to and include CTS, injury to the right or left shoulder, or injury to the cervical spine. It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, while working in one of employer's warehouses. The claimant alleged that, as an extension of her compensable right-sided "trigger finger" and tenosynovitis injury, she also injured her right upper arm, shoulder, and neck upon her return to work in August 1999. Evidence introduced at the CCH upon which the hearing officer could have relied to decide that the claimant's compensable injury did not so extend include the medical records from her surgeon, showing no additional injury or complaint of further injury. The claimant testified at the CCH that, because employer failed to follow her doctor's postsurgery restrictions, she reinjured herself and her injury extended to her upper arm, shoulder and neck. The hearing officer wrote that neither the claimant's testimony nor the medical records reflect that the \_\_\_\_\_, compensable injury extended to CTS, right or left shoulder injury, or any spinal problem.

**Alleged \_\_\_\_\_, Injury**

The hearing officer did not err in deciding that the claimant did not sustain a compensable injury in the form of an occupational disease on \_\_\_\_\_; that she did not timely notify her employer of such an alleged injury, thereby relieving the employer from liability; and that the claimant did not, consequently, have disability. The evidence adduced

at the CCH supporting the hearing officer's determinations on these issues includes medical records from employer's clinic, showing that the claimant did not complain of any left-sided injuries/problems at her November 18, 1999, examination and that she related all of her complaints at that time to her \_\_\_\_\_, injury. While the claimant testified, through a friend and translator, that she did complain of left-sided problems in November, the hearing officer stated that he did not find the claimant credible and the pertinent medical records show no such complaint. With respect to the notice issue, the hearing officer wrote that "[t]he evidence is not persuasive that Claimant mentioned any injury at work on \_\_\_\_\_."

With no compensable injury found, there is no loss upon which to find disability. By definition, disability depends upon a compensable injury. See Section 401.011(16).

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, the decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge